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Regulating Algorithm-Based Contracts: How the Eu Artificial Intelligence Act Is Reshaping Risk Allocation in International B2b Transactions

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Abstract: This article examines how the EU Artificial Intelligence Act (the "EU AI Act") transforms the allocation of risk in cross-border B2B contracts built on algorithmic and automated decision-making systems. Drawing on doctrinal and comparative legal analysis of the EU AI Act, related EU instruments - the Model Contractual Clauses for AI Procurement and initiatives of the European Law Institute - and UNCITRAL's Model Law on Automated Contracting, the study shows that before the EU AI Act, risk distribution in international B2B transactions involving intelligent systems was governed mainly through contractual mechanisms (limitation-of-liability clauses, warranties, indemnities) and general rules of tort and contract liability, while regulatory intervention remained fragmentary (the GDPR, sector-specific rules). The EU AI Act introduces binding obligations concerning risk management, data quality, transparency, and human oversight, addressed primarily to providers and deployers of high-risk AI systems, including those located outside the EU. This reinforces the public-law dimension of risk allocation, narrows freedom of contract in shifting certain risks onto counterparties, and encourages a redistribution of risk across AI supply chains. The article argues that, in international B2B transactions, the EU AI Act functions as a "background mandatory layer" that rewrites the conventional architecture of contractual regulation, establishing new baseline reference points for negotiating warranties, limitation-of-liability clauses, due-diligence obligations, and compliance-cost allocation mechanisms. The article concludes that risk distribution in international B2B transactions is becoming a hybrid of contractual and regulatory allocation, and that businesses outside the EU need to treat the EU AI Act as a de facto global standard.

Keywords: Artificial intelligence; EU AI Act; algorithmic contracts; risk allocation; B2B; automated decision-making; international trade; contract law.

Introduction: AI-based intelligent systems are no longer a novelty in international B2B transactions: they are used for dynamic pricing, automated counterparty selection, credit and operational risk assessment, supply-chain management, robo-advisory services, and similar functions. These systems no longer merely "support" decision-making - they increasingly generate offers, trigger the performance of obligations, and modify contractual parameters on their own.

The risks typically arising in such relationships - algorithmic error, data bias, unauthorized use, and regulatory sanctions - have traditionally been allocated across most jurisdictions through freedom of contract, general rules of tort and contractual liability, and fragmented sector-specific regulation (for example, in the financial sector). The advent of the EU AI Act as the first comprehensive AI statute changes this picture: it introduces binding regulatory duties that directly affect who is responsible, and for what, in international B2B transactions involving AI.

The purpose of this article is to show how the EU AI Act shifts the balance of risk among providers, deployers, and business users of intelligent systems in

international B2B contracts, and what doctrinal consequences this carries for contract law and for the practice of structuring transactions.

LITERATURE REVIEW AND THEORETICAL APPROACHES

In the English-language doctrine, algorithmic contracts are analyzed along several interconnected strands: regulation of algorithmic consulting and robo-advice (Baker & Dellaert, 2018; Schwarcz, Baker & Logue, 2025), with emphasis on scalable risk and information asymmetry;

• automated decision-making (ADM) and its relationship to traditional consumer-protection regimes in EU law (ELI Interim Report on EU Consumer Law and ADM; ELI Project on Algorithmic Contracts);

• the allocation of liability for algorithmic errors among developers, providers, integrators, and users (KPMG submission on ADM, 2022; Aon, 2025; sector-specific studies on financial services and investment).

In parallel, UNCITRAL has developed a Model Law on Automated Contracting (MLAC) which is not directly linked to the EU AI Act but reflects a global trend toward recognizing automated systems as an ordinary instrument of commercial contracting, offering a neutral framework for allocating the risks of their use.

Post-Soviet and European private-law doctrine is gradually moving away from debates over the "legal personality of AI" toward more pragmatic models of risk and management-duty transfer - through contract, corporate policy, soft law, standard contractual terms, and public-law requirements.

The article draws theoretically on three ideas:

• risk-based regulation - where the scope and nature of regulatory requirements depend on the risk category;

• governance-based attribution - tying legal consequences to who controls the system and who benefits from it;

• contract as risk allocation - the classical view of contract as a mechanism for distributing risk and cost between the parties.

Risk-Based Approach and Categories of Participants

The EU AI Act introduces risk categories - prohibited, high-risk, limited-risk, and minimal-risk - together with corresponding tiers of requirements for AI systems. For B2B contracts, high-risk systems are of central importance, as they are frequently used in supply-chain management, corporate credit scoring, logistics, and digital platforms.

The Act distinguishes several roles:

• provider - the person who develops an AI system or places it on the market;

• deployer (user) - the entity that uses an AI system in its own operations;

• importers, distributors, and other participants in the supply chains of components and models.

Each role carries binding obligations: risk management (Art. 9), data quality (Art. 10), technical documentation (Art. 11), transparency and user information (Art. 13), human oversight (Art. 14), cybersecurity and monitoring (Arts. 15–16), and, for deployers, the correct use and monitoring of the system (e.g., Art. 26 and the related commentary).

The EU AI Act carries a pronounced extraterritorial element. Accordingly, if the output of an AI system is used within the territory of the EU, an organization established in a third country may be classified as a provider or deployer for the purposes of the Act, even if the system itself operates outside the Union.

This directly affects international B2B transactions:

• third-country companies supplying algorithmic services to European partners must now account not only for contractual risk but also for regulatory duties under the EU AI Act;

• the traditional model of risk allocation shifts as a result: risks that were previously shifted onto the European customer by contractual clauses become non-transferable, or transferable only to a limited degree, because public-law liability is now tied to specific roles (provider, deployer).

The Traditional Model: Contract as the Principal Instrument of Liability Transfer

Before the EU AI Act, risk allocation in international algorithm-based transactions rested on a combination of:

• contractual mechanisms (limitation-of-liability clauses, quality warranties, SLAs, indemnity clauses, professional-liability insurance);

• general rules of tort/contractual liability (negligent system design, breach of information duties,

misrepresentation);

• targeted regulation (for example, in financial services, data protection under the GDPR, requirements for algorithmic trading, and similar areas).

Under the earlier model of contractual regulation, the "developer—corporate client" pairing frequently produced markedly asymmetric relationships. Providers sought to limit their own liability as far as possible through contractual caps and exclusions, while a substantial share of the risk - algorithmic error, data quality, regulatory consequences - was often shifted onto the client, particularly where the client itself supplied the data or configured the model. Control over the algorithm was treated, for the most part, as a matter falling entirely within the parties' contractual autonomy.

The EU AI Act introduces binding minimum standards of conduct for providers and deployers that cannot be waived or softened by contract, given their public-law character, and that now serve as a new reference point against which the reasonableness of contractual risk-allocation mechanisms is assessed.

A provider of a high-risk system must implement a comprehensive risk-management system and carry out assessment and testing both before the system is placed on the market and throughout its operation (Arts. 9–15). As a result, an attempt to shift onto the client the full risk arising from non-compliance with such duties may be held contrary to public policy or void.

The deployer must ensure the correct selection and use of the system, organize staff training, monitor the system's operation, and report serious incidents. Consequently, certain risks that could previously fall on the provider are now properly allocated to the business user.

Additional risk-assessment and risk-mitigation requirements apply to general-purpose AI systems and systems carrying systemic risk, which complicates the vertical allocation of liability along the "model - integrator - end user" chain and calls for more detailed contractual drafting.

In other words, the EU AI Act builds a superstructure on top of traditional contract law: certain categories of risk are now tied to specific roles and are no longer fully subject to contractual modification.

Contractual Adaptation Mechanisms: From Freedom of Contract to MCC-AI

In response to this new regulatory architecture, the European Union has developed the Model Contractual Clauses for AI Procurement (MCC-AI). Although originally designed for B2G relationships, their logic and structure are rapidly spreading into B2B practice.

The MCC-AI:

• set out in detail how compliance obligations under the EU AI Act are divided between provider and customer;

• include provisions on access to information, audits, the right to suspend use of the system, and notification mechanisms for risks and incidents;

• contain extensive warranties and representations concerning data quality, the absence of hidden functions, and compliance with third-party rights.

In practice, similar provisions are increasingly becoming a de facto standard in international B2B contracts with European counterparties: even where the MCC-AI are not formally used, their substance migrates into the proprietary templates of large companies and consulting firms. This raises the contractual burden on providers, who must now offer broader compliance warranties, and complicates the position of providers from third countries, who must now assume the risks of EU AI Act non-compliance even where they previously fell outside EU jurisdiction.

By comparison, the MLAC reflects a more neutral approach: it seeks to remove legal barriers to automation but does not introduce detailed public-law duties for managing algorithmic risk, leaving states and market participants broad freedom to allocate such risk contractually.

Against this background, the EU AI Act reflects a markedly higher degree of regulatory intervention. Unlike the MLAC, it sets minimum risk-management standards, clearly fixes the "transfer of responsibility" along the supply chain - provider, deployer, distributor - and is becoming a de facto global standard for AI regulation, a position attributable to the EU's weight in the international technology market.

Post-Soviet doctrine, including research on robo-advice, digital platforms, and the use of AI in investment, emphasizes that tying AI-management

duties firmly to large providers and platforms reduces risk for small business users while simultaneously raising entry barriers for providers from third countries.

From a practical standpoint, the EU AI Act changes the parties' bargaining positions: European companies now have grounds to demand broader warranties and liability from providers by invoking mandatory regulatory duties. The Act also shifts the equilibrium of risk more generally. Even where a contract formally relieves the provider of liability for certain algorithmic defects, breach of the duties imposed by the EU AI Act inevitably leads to regulatory liability and indirect losses that cannot be fully passed on to the client. It likewise strengthens the role of compliance audits and due diligence, which are becoming an integral part of assessing commercial risk when selecting a provider and structuring subcontractor chains.

From a doctrinal standpoint, the Act reinforces the shift from a "contract-only" model to a "contract-plus-regulatory-governance" model, in which risk allocation ceases to be purely a private matter between the parties. It contributes to the emergence of "algorithmic due diligence" as a new strand of contractual practice and encourages the development of soft law - model clauses, codes of conduct, and industry standards - operating as an intermediate layer between mandatory law and the individual contract.

CONCLUSION

The EU AI Act does not confer independent legal personality on intelligent systems and does not replace private-law mechanisms of contractual regulation. It does, however, fundamentally change the context in which international algorithm-based B2B contracts are concluded. The Act:

• establishes binding standards for risk management, data quality, transparency, and human oversight;

• fixes a role-based architecture of responsibility (provider, deployer, distributor) that carries extraterritorial effect;

• narrows freedom of contract with respect to the full transfer of certain risks to a counterparty, since the corresponding duties are firmly tied to specific roles and cannot be removed by contract.

As a result, risk allocation in international B2B transactions is no longer purely a product of negotiation and relative economic strength; it is becoming a hybrid of contractual and regulatory allocation. For companies and states outside the EU, this means treating the EU AI Act as a de facto global standard when designing intelligent services and structuring cross-border contracts.

Further doctrinal development should focus on:

• a more precise delineation of the boundary between contractual and regulatory liability;

• the integration of EU AI Act provisions into judicial practice concerning disputes over risk allocation;

• a comparison of the European approach with UNCITRAL's MLAC-level initiatives and with emerging global instruments in AI and international trade.

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